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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 05.12.2019

+ W.P.(C) 9056/2018

SH. RAKESH RASTOGI AND ORS.

..... Petitioners

Through Ms.Savita Rustagi, Adv. with
petitioners-in-person

versus

NORTH DELHI MUNICIPAL
CORPORATION AND ORS.

..... Respondents

Through Mr.Mukesh Gupta, Standing Counsel
with Mr.Mayank Gupta, Adv. for R-1/
North DMC.
Mr.Harkirat Sawhney, Mr.Rati Coshic
and Ms.Shailja Jha, Advs. for R-3, 4,
6 & 9.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This is an unfortunate case where neighbours are fighting over the location of a lift to be used by the residents of the area. Needless to add that those who do not wish to use the lift have filed the present writ petition. The private respondents are citing medical reasons as a need for installing the facility of a lift to access their residences.
2. The present writ petition is filed for quashing of the permission for installation of lift given by respondents No.1 and 2 dated 26.06.2018 to respondents No.4 to 9 in Navyug CGHS (Co-Operative Group Housing Society) Ltd., Plot No.49, Sector-9, Delhi- 110085. Other connected reliefs are also sought.
3. There are in total five petitioners. The case of the petitioners is that

pre-requisites for grant of NOC-cum-Sanction for installation of lift and connecting bridge in CGHS Flats, DDA built Flats in NCT of Delhi. This includes consent from owners using common staircase in that block as a pre-requisite (50% or more excluding ground floor). The proposed lift should preferably be on a blind wall i.e. the wall which does not have any door/window opening or the lift structure should be at an adequate distance from existing structure so that natural light and ventilation of the flat is not affected. Other stipulations are also stated.

4. It is stated that respondent No.3 has 105 members who are residing in the said Navyug CGHS Ltd. flats. The flats are situated in columns consisting of four floors i.e. ground floor, first floor, second floor and third floor. It is pleaded that respondent No.3, Managing Committee of Navyug CGHS Ltd., clandestinely conducted its General Body Meeting (*in short the 'GBM'*) on 25.03.2018 without giving any general notice. It was decided to give an NOC to members/blocks of society proposing installation of lift provided they will bear the costs of installation and maintenance of the lift.

5. The resolution was passed. Thereafter, respondents No.4 to 9 applied for permission for installation of lift in respect of Flats No.86, 93, 95, 96, 109 and 112 in Blocks No.6, 7 and 8. Respondents No.1 and 2 granted permission to erect and install a lift contrary to guidelines. The petitioners along with many members of respondent No.4 have lodged complaints with North DMC; Management of the Navyug CGHS Ltd.; and Registrar, Co-operative Societies but to no avail.

6. In sum and substance, the grievance/objections of the petitioners are as follows:

i) Permission has been accorded by respondents No.1 and 2 without

analysing the pre-requisites for grant of NOC-cum-Sanction and examining the lay out plan.

- ii) As per policy, there shall not be any encroachment on public land. In the present case, it is stated that erection of the lift is in fully developed park having trees. Trees have to be uprooted for erection of lift.
- iii) Respondents No.1 and 2 have granted permission without realising that there is no consent of 50% of inhabitants of Blocks 6, 7 and 8 whereas as per policy the consent of more than 50% of the owners (excluding ground floor owners) are needed.
- iv) Respondents No.1 and 2 have failed to note that structure stability of the building, lift and connecting bridges must be ensured but respondents No.4 to 9 are making columns/pillars adjacent to the existing structure which would damage the structural integrity of more than 30 years old flats.
- v) The natural light and ventilation of existing rooms as per policy should not be disturbed. However, respondents No.1 and 2 have failed to notice that inhabitants are being deprived of basic amenities of sun light and ventilation.

Based on the above, it has been strongly urged that the NOC granted to the private respondents to construct the lift is illegal and liable to be revoked.

7. Private respondents No.3, 4, 6, 8 and 9 have filed their counter affidavit. They have denied the contentions of the petitioners. They have pleaded that the petitioners are ignoring the physical conditions of the family

members of the private respondents. Father of respondent No.4 has undergone knee replacement surgery and suffers from respiratory problems. Respondent No.6 suffers from chronic backache disability. The wife of respondent No.8 Mrs.Swati Gogia is an asthma patient and his father is about 93 years old and suffers from knee joint disability. Other such examples are also given. It is stated that to overcome this situation and to live their remaining life with dignity without suffering pain and agony, the respondents have requested the Managing Committee, i.e. respondent No.3 to allow them to take benefit of the policy of DDA for installing lifts in Co-operative Society. Respondent No.3 gave notice of the special GBM to all the members. Special GBM was held on 25.03.2018. Resolution was unanimously adopted. Petitioner No.2 and 4 were present and participated in the special GBM and gave their approval for installation of the lift. Total 46 members have attended the special GBM.

8. It is further pleaded that building was constructed 40 years ago when lift was not included. Flat owners have been living for more than 30 years, are elderly, handicapped on account of old age and are in urgent need of lift to access the upper floors. It is pleaded that installation of lift is being done in a common area wherein only an area of 8ft. x 8ft. is being used and the connecting bridges/walkways are being constructed on cantilever system which are designed in a manner that no load of any kind will be transferred to any wall as enumerated in the policy. Lift is being installed in a common area in the society and not on a public land. Respondent No.3, Managing Committee of Navyug CGHS Ltd. has also secured an amount of Rs.50,000/- as security deposit from answering respondents along with an undertaking that after completion of the installation of lift, they shall re-fence the site, re-

grass and replant the small plants that have to be transplanted to accommodate the construction work. The estimated cost of the lift is approximately Rs.38 lacs. It is also stated that erection/installation of the lift is being done according to the policy and inhabitants of the flats are not deprived of amenities of sun light and ventilation. It is denied that any trees are being cut.

9. Respondents No.1 and 2 have also filed a status report. In the status report, it is stated that the consent of 50% from proposed blocks was submitted by the applicants. There are 38 flats in the proposed blocks which include 8 flats on the ground floor. 50% of the flat owners, out of the 30 occupants (ground floor occupants being excluded as per policy) have given their consent. It is further stated that lift is being constructed in a common area of the society. The dispute among the petitioners and the private respondents relates to common area/common space within the premises of the society and this has to be resolved among themselves. As far as the petitioners are concerned, NOC granted by the Managing Committee of the society is a final decision.

10. It is further stated that this court in a similar matter for erection/installation of lift in Dhruva CGHS, titled '***Saurabh Jain & Ors. v. East Delhi Municipal Corporation & Ors., 2017 SCC OnLine Del 12140***', had directed that NOC granted by the Managing Committee of the Society was binding.

11. I may note that this court on 28.08.2018 when the matter came up for hearing this Court had restrained the respondents from raising any further construction on the lift. On 09.05.2019, this court noted that counsel appearing for the petitioners and the private respondents shall visit the site in

question and suggest to the court a solution to the dispute. On 30.05.2019, the petitioners were requested to indicate an alternative site to the Engineer of North DMC along with architectural drawings and certificate of an architect. The petitioners suggested three sites, however, respondents No.1 and 2 through concerned Executive Engineer have filed a status report rejecting the alternate sites as not viable for construction of the lift on account of following technical reasons:

- “i. The proposed sites fall on the existing sewage / drainage line which affects basic services and amenities of the residents which is in violation lift policy.
- ii. Common passage also obstructed at certain points.
- iii. The proposed sites are very near to the building thereby affecting ventilation and light to the nearby flats residents which is also in violation lift policy.”

12. I have heard learned counsel for the parties.

13. Learned counsel for the petitioners has vehemently urged as follows:

- i. The park in question, as per lay out plan, where lift well is proposed to be installed has a dimension of 35ft. x 40ft. The park of the society will be severely affected.
- ii. No permission from the Forest Department has been obtained for cutting of trees.
- iii. As per the site plan of the society all the park areas have been converted into paved areas.
- iv. Since the plan approved by respondents No.1 and 2 is incorrect and lacks dimension, the bridges which are proposed to be constructed will affect the sun light and ventilation of some of the flats.

- v. The lift that is proposed to be installed is extremely expensive. In case, any of the petitioners seek to use the lift they will have to pay a specific amount for the same.

14. I may now deal with the contentions of the petitioner. It has been strongly urged that the proposed lift is creating problems with the open areas and that the GBM of the society was wrongly conducted.

15. A GBM of the society where the complex is situated, namely, Navyug CGHS Ltd. has been held on 25.03.2018 and petitioners No.2 and 4 along with 44 other members have attended the meeting. The General Body of the Society unanimously approved the proposal for installation of lift and the private members in question who are proposing the lift are to bear the costs of installation and maintenance of the lift.

16. In light of the above, it is clear that the General Body has given its consent for using a common area of the society for setting up a lift. In my opinion, there are no valid objections taken by the petitioners to the conversion of a small area of the alleged park into a lift well.

17. A co-ordinate Bench of this court in '**Saurabh Jain & Ors. v. East Delhi Municipal Corporation & Ors.**' (supra) vide order dated 30.11.2017 held that once a decision is taken by the society through its elected executive, all the members of the society are bound by it. The court held as follows:

“ Once, a decision is taken by the society through its elected executive, all the members of the society are bound by it. It also does not lie in the mouth of the petitioners that the permission granted by the society for the issuance of impugned NOC is not in the larger interest of the occupants of the four blocks, where the lift is getting erected.

....”

18. Accordingly, there is no merit in the plea of the petitioners regarding use of common land of the society for installation of lift. Regarding other contentions raised, in my opinion, these are entirely misplaced.

19. Learned counsel for the respondents has categorically stated that no tree is proposed to be cut and the question of seeking any permission from the Forest Department does not arise.

20. Regarding plea of affecting light and ventilation, in my opinion, the argument made is without any basis or substance. A bald plea is sought to be raised that the light and ventilation of some of the flats is being affected by construction of the lift. Other than making these averments there is nothing on record to substantiate this plea. Respondents No.1 and 2 have sanctioned the plan in question as per the norms of the policy and it is not for this court to sit in appeal over the decision taken by the said authority.

21. In this regard reference may be had to the judgment of a Division Bench of this court in the case of ***Shaik Abdul Hameed vs. Delhi Development Authority & Ors., 2013 SCC OnLine Del 4354***, where the court held as follows:-

“8. It has to be borne in mind that the aforesaid policy circular of the DDA is for the benefit of the flat owners on the upper floors who did not have the provision of access to their flats by lifts. It ought, further, to be borne in mind that about 40 years ago when the group housing floors were constructed, lifts were not in vogue. The aforesaid circular is a policy decision aimed to cater to such flats so as to make them more accessible and habitable. Most of the flat owners, who may have purchased the same 30-40 years ago, would be old and infirm. It is often not possible for them to take the staircase up to the first, second and third floors.

In the absence of the facility of a lift the prospect of having to take the stairs to reach the ground or to access a higher floor apartment can be very daunting, especially for the old or infirm. Often they would feel marooned because of inaccessibility leading to further complications for aged “emptynestness”. Medical emergencies too would pose their own set of logistic problems. Thus a policy permitting the improvement of common facilities for the general good of the Society would be a salutary and welcome step. The land where the lift-well is to be erected has been clearly demarcated and in any case is in a common area over which no particular individual can claim an individual or proprietary right. A lift, after all, is a technological contraption which makes it convenient for all residents and visitors to higher floors of a multistoried building, in particular the aged and sick, to enjoy and use their residences to the fullest extent.”

In the present case it is manifest that the petitioners are not the beneficiaries of the lift and are hence raising all conceivable issues which have no merits.

22. Reference may also be had to the judgment of the Supreme Court in the case of *West Bengal Central School Service Commission & Ors. vs. Abdul Halim & Ors.*, 2019 SCC OnLine SC 902, in which the Supreme Court held as follows:-

“27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.

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29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-

judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.

30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan vs. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.

31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect.”

23. In the present case the petitioner has failed to show that the decision of the statutory authorities suffers from arbitrariness or is capricious or is such that no reasonable person could have arrived at the same.

24. The pleas raised by the petitioners are misplaced. I may only add that once the lift is completed/erected/installed, respondents No.1 and 2 will ensure an appropriate compliance with its policy before completion certificate for the lift is granted.

25. With the above observations, the present petition stands disposed of. All pending applications, if any, also stands disposed of.

JAYANT NATH, J.

DECEMBER 05, 2019/v

Corrected and released
on 28.12.2019